

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

SYLVIA GARZA

§
§
§
§
§
§
§
§

Plaintiff

vs. CIVIL ACTION NO. _____

WALGREEN CO.

Defendant

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS:

WALGREEN CO. (hereinafter WALGREENS), Defendant in the cause styled *Sylvia Garza v. Walgreen Co.*, Cause No. C-3761-10-I in the 398th District Court of Hidalgo County, Texas, pursuant to the terms and provisions of 28 U.S.C.A. §§ 1441(a) and 1446, hereby files this Notice of Removal of said cause to the U.S. District Court for the Southern District of Texas, McAllen Division, and as grounds therefore, would respectfully show this Court as follows:

I.

TIMELINESS

This action was originally commenced in the 398th District Court of Hidalgo County, Texas on the 8th day of December, 2010, by the filing of Plaintiff's Original Petition. WALGREENS first received a copy of Plaintiff's Original Petition on December 14, 2010.

Thus, Defendant's Notice of Removal is timely filed as 30 days have not lapsed since the time WALGREENS was served with a copy of Plaintiff's Original Petition in this case.

II.

NATURE OF THE CASE

This Notice of Removal is sought pursuant to 28 U.S.C. Section 1441(a) and this is a civil action brought in a State court in which the District Court of the United States has original jurisdiction, and it is removed by the Defendant to the District Court of the United States for the District and Division embracing the place where this action is pending. Moreover, there is complete diversity of citizenship between Plaintiff and Defendant because they are citizens and residents of different states pursuant to 28 U.S.C. § 1332.

III.

AMOUNT IN CONTROVERSY

Plaintiff's Original Petition, filed in the state court action, alleges damages in Paragraph VI in an amount "of \$975,000.00 as fair compensation for her damages from Defendant." Considering both the facts in controversy, as well as the facial allegations of Plaintiff's Original Petition, it becomes clear that plaintiff's claims will exceed the jurisdictional amount. Plaintiff's actual damage claim is made up of allegations that she is seeking damages including medical expenses in the past and, in reasonable probability, she will incur in the future; physical pain and suffering in the past and, in reasonable probability, she will incur in the future; mental anguish in the past and, in reasonable probability, she will incur future; lost wages in the past and loss of earning capacity in the future, and disfigurement in the past and, in reasonable probability, she will incur future; physical impairment in the past and, in reasonable probability, she will incur future; and physical pain and mental anguish in the past and future. Such claims

will likely exceed the \$75,000 minimum jurisdictional limits of the United States District Court, exclusive of interest and costs.

Thus, considering these allegations along with plaintiff's actual damage allegations, it becomes facially apparent that the amount in controversy here certainly exceeds the \$75,000 minimum jurisdictional limits of the United States District Court, exclusive of interests and costs.

IV.

On December 8, 2010, the date of the filing of this action, and at all times hereafter, up to and including the present, Plaintiff was and is a citizen of the State of Texas, and Defendant, WALGREENS, was and is now a foreign corporation not incorporated under the laws of the State of Texas nor having its principal place of business in the State of Texas. Defendant is an Illinois Corporation with its principal place of business at 200 Wilmot Rd. Deerfield, IL 60015. Accordingly, there is complete diversity of citizenship between Plaintiff and Defendant. Petitioner attaches hereto copies of all process, pleadings, and orders served upon it in this action.

V.

CONCLUSION

All conditions and procedures for removal have been satisfied. Petitioner would show that it has filed with the Clerk of the District Court of Hidalgo County, Texas, a true copy of this Notice simultaneously with the filing of this Notice in this Court. WALGREENS has attached hereto a complete copy of the state court file in said action. The 398th Judicial District Court of Hidalgo County, Texas docket sheet for this cause has also been attached to this notice. Finally, there are no signed orders by the state judge. A filing fee of \$350.00 has

been tendered to the Clerk of the United States District Court for the Southern District of Texas, McAllen Division. Defendant will promptly give written notice of the filing of this Notice of Removal to plaintiff and will promptly file a copy of the Notice of Removal with the Clerk of in the 166th Judicial District Court of Bexar County, Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant, WALGREEN CO., respectfully requests that this action now pending against it in the 398th District Court of Hidalgo County, Texas, be removed to this Honorable Court for trial and determination of all issues.

Respectfully submitted,



CYNTHIA DAY GRIMES
State Bar No. 11436600
Southern District Bar No. 22371
Direct Telephone: 210/731-6308
Direct Fax: 210/785-2908
E-Mail: cdg@ballandweed.com

BALL & WEED, P.C.
10001 Reunion Place, Suite 600
San Antonio, Texas 78216
Telephone: 210/731-6300
Fax: 210/731-6499
ATTORNEY FOR DEFENDANT,
WALGREEN CO.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been sent to the parties listed below by 1st class mail and/or ECF System on this 5th day of January, 2011.

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED:

Michael J. Cisneros
The Cisneros Law Firm, L.L.P.
312 Lindberg
McAllen, Texas 78501
Telephone: 956-682-1883
Fax: 956-682-0132



CYNTHIA DAY GRIMES

Civil Docket

Court

Case No. C-3761-10-I
HIDALGO CountyDecember 28th, 2010
3:48pm

SYLVIA GARZA vs. WALGREEN CO.

Filed : 12/08/2010
Status: Filed
Type: PERSONAL INJURYJudge
Aida Salinas Flores

Court Reporter

Date	Disposition Information	Volume	Page
Events & Orders of the Court			
Case Disposition:			
12/08/10	\$FILE Entered by: gperez on 12/08/10 at 04: 05pm		
12/08/10	PLAINTIFF'S ORIGINAL PETITION Entered by: tsg on 12/08/10 at 04: 05pm		
12/09/10	CITATION ISSUED TO WALGREEN CO. AND SAME HAND DELIEVERED TO: JOE MORENO ON 12.10.10; / KH		
12/20/10	Entered by: SPONCE on 12/09/10 at 07: 55am CITATION RETURNED ON WALGREEN CO. REG. AGENT: PRENTICE HALL CORPORATION SYSTEM, FILED Entered by: MELINDAD on 12/20/10 at 04: 53pm		
Fee Payment Information			
Plaintiff Payments Total Payments: 1 Total Paid : \$260.00			
12/09/10	CK Rcpt # 220885 \$260.00		
		DATE <u>12/23/10</u>	A true copy LAURA J. MUROCA District Clerk, Hidalgo County, Texas By <u>S. Salinas</u>

EXHIBIT

tabbies'

A